

IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

OLIVER JORGENSEN,
Petitioner/Appellee,

and

DEBORAH GIANNECCHINI,
Respondent/Appellant.

No. 2 CA-CV 2016-0024
Filed August 11, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Pinal County
No. S1100DO201400520
The Honorable Karl C. Eppich, Judge

APPEAL DISMISSED

COUNSEL

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and

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In Propria Persona

MEMORANDUM DECISION

Presiding Judge Vásquez authored the decision of the Court, in which Chief Judge Eckerstrom and Judge Miller concurred.

V Á S Q U E Z, Presiding Judge:

¶1 In this family-law matter, Deborah Giannecchini challenges the trial court's order that she disclose her address to her ex-husband, Oliver Jorgenson, pursuant to their consent decree of dissolution of marriage. Deborah maintains the court erred in entering that post-decree order because her address is protected under the secretary of state's address confidentiality program (ACP). For the following reasons, we dismiss for lack of jurisdiction.

Factual and Procedural Background

¶2 The parties were married in April 2011. They have one daughter, who was born in August 2013. The following year, based on her reports of domestic violence committed by Oliver, Deborah applied for and received a substitute address through the ACP. *See* A.R.S. §§ 41-161 to 41-169. In July 2015, the trial court dissolved the parties' marriage in accordance with their consent decree. Pursuant to the consent decree, the court ordered: "[Deborah] is soon moving to a new residence. [Deborah] shall disclose her address to [Oliver] no later than November 1, 2015."

¶3 On November 6, 2015, Oliver filed an "Expedited Motion to Compel Compliance and for Sanctions," asserting that Deborah had "refused to abide" by the order to disclose her address. He asked the court to "[c]ompel" Deborah to "immediately disclose

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her address” and requested sanctions. At a subsequent hearing, Deborah admitted that the consent decree required her to release her address and that there were no conditions listed in the decree that would excuse disclosure. However, she testified that at the time she signed the decree she “felt comfortable giving up the address” because she thought her mother would be living with her.¹ Since that time, circumstances had changed and her mother was unable to move to Arizona. Deborah also argued that Oliver’s subsequent behavior justified “continued protection of the address.”

¶4 In its under-advisement ruling, the trial court ordered Deborah to provide Oliver “the physical address at which the child will be residing while in [her] care.” The court explained:

Based upon the evidence presented at [the] hearing, the Court does not find [Deborah’s] conduct to be justified. The Court notes that the disclosure of the address was an expressly negotiated term of the consent decree to which [Deborah] freely agreed, notwithstanding her claims of dissatisfaction with her counsel at the time. Nor is the Court persuaded that the alleged post-decree conduct by [Oliver] warrants noncompliance. It is reasonable for [Oliver] to be aware of where the child will be residing while in [Deborah’s] care.

¶5 Deborah requested – and received – a stay of that order while she sought special-action relief. But this court declined special-action jurisdiction. *Giannecchini v. Jorgenson*, No. 2 CA-SA 2016-0003 (Ariz. App. Jan. 26, 2016) (order). After Deborah again failed to release her address, Oliver filed another motion to compel compliance. Meanwhile, Deborah initiated this appeal.

¹An ACP participant may withdraw from the program. See § 41-163(E). And the ACP statutes make clear that the onus is on the participants to use and maintain their substitute address. See §§ 41-164(C), (E), 41-166(A), (J), (N)(2).

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Jurisdiction

¶6 Oliver argues that this court lacks jurisdiction over Deborah's appeal. He points out that Deborah characterized this appeal as arising from a "[c]ontempt [p]roceeding," and he maintains that "contempt orders are reviewable in appropriate circumstances only by special action." Because our jurisdiction is defined by statute, we have an obligation to examine whether we have jurisdiction over an appeal and, if lacking, to dismiss. See *Grand v. Nacchio*, 214 Ariz. 9, ¶ 12, 147 P.3d 763, 769 (App. 2006); *Davis v. Cessna Aircraft Corp.*, 168 Ariz. 301, 304, 812 P.2d 1119, 1122 (App. 1991).

¶7 "A special action petition is the appropriate method to challenge a civil contempt order because the finding of contempt and civil sanctions are not appealable." *Stoddard v. Donahoe*, 224 Ariz. 152, ¶ 7, 228 P.3d 144, 146 (App. 2010); see also *BMO Harris Bank Nat'l Ass'n v. Bluff*, 229 Ariz. 511, ¶ 5, 277 P.3d 216, 218 (App. 2012); *Trombi v. Donahoe*, 223 Ariz. 261, ¶ 14, 222 P.3d 284, 288 (App. 2009). "The rationale is that parties have already been given the chance to appeal from the order that forms the basis for contempt," and special-action review provides speedy relief. *Elia v. Pifer*, 194 Ariz. 74, ¶ 30, 977 P.2d 796, 802 (App. 1998).

¶8 This case does not involve a "contempt order," or, more specifically, one that the trial court identified as such. Although the trial court twice ordered Deborah to comply with the consent decree by providing her address to Oliver, it did not expressly hold her in contempt of court.

¶9 Nevertheless, "the substance or effect of an order determines its character for appeal purposes." *Ruesga v. Kindred Nursing Ctrs., L.L.C.*, 215 Ariz. 589, ¶ 12, 161 P.3d 1253, 1257 (App. 2007). "[C]ivil contempt is the disobedience of a court order directing an act for the benefit or advantage of the opposing party to the litigation." *Ong Hing v. Thurston*, 101 Ariz. 92, 98, 416 P.2d 416, 422 (1966). And contempt orders broadly provide enforcement of those court orders that were previously subject to appeal. See *Elia*, 194 Ariz. 74, ¶ 30, 977 P.2d at 802 (enforcement of order underlying contempt cannot be addressed on appeal); *Herzog v. Reinhardt*, 2

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Ariz. App. 103, 105, 406 P.2d 738, 740 (1965) (order permitting party to purge herself of contempt by delivering custody of minor child on certain day when contempt consisted of failing to deliver child on previous date is enforcement of judgment, and therefore no appeal lies).

¶10 Here, the trial court formally adopted the parties' consent decree and ordered Deborah to give Oliver her address. When Deborah missed the November 1 disclosure deadline, Oliver sought enforcement of the consent decree. The court ordered Deborah to comply, finding her noncompliance unreasonable and awarding Oliver attorney fees. Thus, the intent of the court's order was enforcement of the consent decree, which Deborah had disobeyed and was previously subject to appeal.

¶11 Accordingly, we treat the order like a contempt order, just as the parties and the trial court did below. Notably, at the hearing, Oliver asked the court to "find [Deborah] in contempt of court," and both Deborah and the court referred to Oliver's motion as one filed pursuant to Rule 92, Ariz. R. Fam. Law P., which governs civil contempt in the family-law context.

¶12 As Oliver acknowledges, however, this court can exercise its discretion to treat a direct appeal as a special action and accept jurisdiction. See *Danielson v. Evans*, 201 Ariz. 401, ¶ 35, 36 P.3d 749, 759 (App. 2001); *Lloyd v. State Farm Mut. Auto. Ins. Co.*, 189 Ariz. 369, 374-75, 943 P.2d 729, 734-35 (App. 1996). But Deborah previously filed a petition for special action, and this court declined to accept jurisdiction. We see no reason to reconsider that decision now, particularly since Deborah's opening brief in this appeal is nearly identical to her previously filed petition for special action. See *Catalina Foothills Unified Sch. Dist. No. 16 v. La Paloma Prop. Owners Ass'n, Inc.*, 229 Ariz. 525, ¶ 21, 278 P.3d 303, 309 (App. 2012) (declining to treat appeal as special action and accept jurisdiction, in part, because court previously declined jurisdiction over special action from same order).

¶13 That said, we have reviewed the record and have concluded that this case does not merit the exercise of our special-action jurisdiction. See *State ex rel. Romley v. Martin*, 203 Ariz. 46, ¶ 4,

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49 P.3d 1142, 1143 (App. 2002) (“Special action jurisdiction is appropriate in matters of statewide importance, issues of first impression, cases involving purely legal questions, or issues that are likely to arise again.”). Accordingly, we decline to treat this appeal as a special action.

Attorney Fees

¶14 Oliver requests his attorney fees on appeal pursuant to A.R.S. § 25-324. Section 25-324(A) requires us to examine “the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceedings.” The trial court found Deborah’s noncompliance with the consent decree unreasonable, and Deborah admitted that this appeal arose from a “[c]ontempt [p]roceeding,” which we should address by special action. Accordingly, we grant Oliver’s request for reasonable fees, contingent upon his compliance with Rule 21, Ariz. R. Civ. App. P.

Disposition

¶15 For the foregoing reasons, we dismiss this appeal for lack of jurisdiction.